

Article 9A.

North Carolina Manufactured Housing Board – Manufactured Home Warranties.

Part 1. Duties, Warranties, Purchase Transaction.

§ 143-143.8. Purpose.

The General Assembly finds that manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of manufactured home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all segments of the manufactured home industry. The General Assembly also finds that it is reasonable and proper for the manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations. (1981, c. 952, s. 2; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.9. Definitions.

The following definitions apply in this Part:

- (1) Bank. – A federally insured financial institution including institutions defined under G.S. 53C-1-4(4), savings and loan associations, credit unions, savings banks and other financial institutions chartered under this or any other state law or chartered under federal law.
- (1a) Board. – The North Carolina Manufactured Housing Board.
- (2) Buyer. – A person for whom a dealer performs, or is engaged to perform, any services or provides any products including the purchase and setup of a manufactured home for use as a residence or other related use.
- (3) Code. – Engineering standards adopted by the Commissioner.
- (4) Commissioner. – The Commissioner of Insurance of the State of North Carolina.
- (5) Department. – The Department of Insurance of the State of North Carolina.
- (5a) Deposit. – Any and all funds received by a dealer from a buyer or someone on behalf of a buyer for the performance of services or the provision of goods.
- (5b) Escrow or trust account. – An account with a bank that is designated as an escrow account or as a trust account and that is maintained by a dealer for the deposit of buyers' funds.
- (5c) Escrow or trust account funds. – Funds belonging to a person other than the dealer that are received by or placed under the control of the dealer in connection with the performance of services or the provision of products by a dealer for a buyer.
- (5d) Funds. – Any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers. The term does not include letters of credit or promissory notes.

- (5e) License. – A license issued under this Part.
- (5f) Licensee. – A person who has been issued a license under this Part by the North Carolina Manufactured Housing Board.
- (6) Manufactured home. – A structure, transportable in one or more sections, which, in the traveling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.
- (7) Manufactured home dealer or dealer. – Any person engaged in the business of buying or selling manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms "selling" and "sale" include lease-purchase transactions. The term "manufactured home dealer" does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.
- (8) Manufactured home manufacturer or manufacturer. – Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.
- (9) Manufactured home salesperson or salesperson. – Any person employed by a manufactured home dealer to sell manufactured homes to buyers. Manufactured home salesperson or salesperson also includes sales managers, lot managers, general managers, or others who manage or supervise salespersons.
- (10) Person. – Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.
- (11) Responsible party. – A manufacturer, dealer, supplier, or set-up contractor.
- (12) Setup. – The operations performed at the occupancy site which render a manufactured home fit for habitation.
- (13) Set-up contractor. – A person who engages in the business of performing setups for compensation in North Carolina.
- (14) Substantial defect. – Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.
- (15) Supplier. – The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, paneling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer. (1981, c. 952, s. 2; 1987, c. 429, ss. 4, 5, 19; 1999-393, s. 1; 2001-421, s. 2.1.; 2005-451, ss. 1, 2; 2012-56, s. 48.)

§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is created the North Carolina Manufactured Housing Board within the Department. The Board shall be composed of 11 members as follows:

- (1) The Commissioner of Insurance or the Commissioner's designee.
- (2) A manufactured home manufacturer.
- (3) A manufactured home dealer.
- (4) A representative of the banking and finance industry.
- (5) A representative of the insurance industry.
- (6) A manufactured home supplier.
- (7) A set-up contractor.
- (8) Two representatives of the general public.
- (9) A person who is employed with a HUD-approved housing counseling agency in the State.
- (10) An accountant.

The Commissioner or the Commissioner's designee shall chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint to the Board the representative of the banking and finance industry, the employee of a HUD-approved housing counseling agency, and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint to the Board the manufactured home supplier, the accountant, and the set-up contractor. The Commissioner shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured and Modular Homebuilders Association. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years. In the event of any vacancy of a position appointed by the Governor or Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The members of the Board designated in subdivisions (8), (9), and (10) of this subsection shall have no current or previous financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing

boards by G.S. 93B-5. Fees collected by the Board under this Article shall be credited to the Insurance Regulatory Fund created under G.S. 58-6-25.

(b) In accordance with the provisions of this Part, the Board shall have the following powers and duties:

- (1) To issue licenses to manufacturers, dealers, salespersons, and set-up contractors.
- (2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing salespersons.
- (3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this Part.
- (4) To adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Part.
- (5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.
- (6) To request that the Department of Public Safety conduct criminal history checks of applicants for licensure pursuant to G.S. 143B-944.
- (7) To conduct random audits of dealer escrow or trust accounts. (1981, c. 952, s. 2; 1983, c. 717, ss. 107-109, 114; 1987, c. 429, ss. 6, 7, 19, c. 827, s. 1; 1999-393, s. 1; 2002-144, s. 4; 2003-221, s. 1; 2003-400, s. 9; 2005-451, ss. 1, 3; 2011-330, s. 47(b); 2014-100, s. 17.1(jjj); 2018-120, s. 4.8.)

§ 143-143.10A. Criminal history checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for initial licensure as a manufactured home salesperson or set-up contractor.
- (2) Criminal history. – A history of conviction of a state or federal crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure under this Part. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60,

Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) All applicants for initial licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant is checked. Applicants shall obtain criminal record reports from one or more reporting services designated by the Board to provide criminal record reports. Each applicant is required to pay the designated service for the cost of the criminal record report. In the alternative, the Board may provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories, and any additional information required by the Department of Public Safety. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subdivision (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subdivision (a)(2) of this section.

If, after reviewing these factors, the Board determines that the applicant's criminal history disqualifies the applicant for licensure, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited Immunity. – The Board, its officers, and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check. (2003-400, s. 8; 2005-451, s. 1; 2007-416, s. 1; 2012-12, s. 2(vv); 2014-100, s. 17.1(o); 2015-181, s. 47; 2015-286, s. 2.2.)

§ 143-143.11. License required; application for license.

(a) It shall be unlawful for any manufactured home manufacturer, dealer, salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board for each place of business operated by the licensee, as provided in this Part. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for the license shall be made to the Board at such time, in such form, and contain information the Board requires, and shall be accompanied by the fee established by the Board. The fee shall not exceed three hundred fifty dollars (\$350.00) for each license issued. In addition to the license fee, the Board may also charge an applicant a fee to cover the cost of the criminal history record check required by G.S. 143-143.10A.

(c) In the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All of this information shall be considered by the Board in determining the fitness of the applicant. Once the Board has determined that an applicant is fit, the Board must provide the applicant a license for each place of business operated by the applicant.

(d) All licenses shall expire, unless revoked or suspended, on June 30 of each year following the date of issue.

(e) Every licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the next year by applying to the Board, completing the necessary hours of continuing education required under G.S. 143-143.11B, and paying the required renewal fee for each place of business operated by the licensee. The renewal fee shall not exceed three hundred fifty dollars (\$350.00) for each license issued. Upon failure to renew by the first day of July, a license automatically expires. The license may be renewed at any time within one year after its lapse upon payment of the renewal fee and a late filing fee. The late filing fee shall not exceed three hundred fifty dollars (\$350.00).

(f) Repealed by Session Laws 2005-297, s. 1, effective August 22, 2005.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) As a prerequisite to obtaining a license under this Part, a person may be required to pass an examination prescribed by the Board that is based on the Code, this Part, and any other subject matter considered relevant by the Board. (1981, c. 952, s. 2; 1985, c. 487, s. 1; 1987, c. 429, s. 19; 1987 (Reg. Sess., 1988), c. 1039, ss. 2, 3; 1989, c. 485, s. 44; 1991, c. 644, s. 35; 1999-393, s. 1; 2003-400, s. 10; 2005-297, s. 1.; 2005-451, s. 1; 2009-451, s. 21.4.)

§ 143-143.11A. Notification of change of address, control of ownership, and bankruptcy.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Part, the notice may be delivered personally to the

licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

(c) Every person licensed under this Part, except for a person licensed as a manufactured home salesperson, shall give written notification to the Board of any change in ownership or control of the licensee's business within 30 business days after the change. A "change in ownership or control" means the sale or conveyance of the capital stock of the business or of an owner's interest in the business, which operates to place a person or group of persons, not previously in control of the business, in effective control of the business. A violation of this subsection shall not constitute grounds for revocation, suspension, or nonrenewal of a license or for the imposition of any other penalty by the Board.

(d) Upon the filing for protection under the United States Bankruptcy Code by any licensee, or by any business in which the licensee holds a position of employment, management or ownership, the licensee shall notify the Board of the filing of protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any licensee, or for any business in which the licensee holds a position of employment, management, or ownership the licensee shall notify the Board of the appointment within three business days after the appointment. (1999-393, s. 1; 2000-122, s. 9; 2005-451, s. 1.)

§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours of continuing education. Before the renewal of a license, a licensee shall present evidence to the Board that the licensee has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of the licensee's license. No member of the Board shall provide or sponsor a continuing education course under this section while that person is serving on the Board.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars (\$150.00), for the Board's review and approval of proposed continuing education courses. The Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars (\$5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for a course that has not been approved by the Board or for related educational activity and may prescribe the procedures for a licensee to submit information on the course or related educational activity for continuing education credit. The Board may charge the licensee a fee not to exceed fifty dollars (\$50.00) for each course or activity submitted.

(c) The Board may adopt any reasonable rules not inconsistent with this Part to give purpose and effect to the continuing education requirement, including rules that govern:

- (1) The content and subject matter of continuing education courses.
- (2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (3) The methods of instruction.
- (4) The computation of course credit.

- (5) The ability to carry forward course credit from one year to another.
- (6) The waiver of or variance from the continuing education requirement for hardship or other reasons.
- (7) The procedures for compliance and sanctions for noncompliance.
- (d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.
- (e) A manufactured home manufacturer or manufacturer is exempt from the requirements of this section. (1999-393, s. 1; 2001-421, s. 2.2; 2005-451, s. 1.)

§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent in the following amounts:

- (1) For a manufacturer, two thousand dollars (\$2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars (\$100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year.
- (2) For a dealer who has one place of business, the amount shall be thirty-five thousand dollars (\$35,000).
- (3) For a dealer who has more than one place of business, the amount shall be twenty-five thousand dollars (\$25,000) for each additional place of business.
- (4) For a set-up contractor, the amount shall be ten thousand dollars (\$10,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Part. A cash bond or fixed value equivalent shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Part may institute an action to recover against the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims. (1981, c. 952, s. 2; 1985, c. 487, s. 2; 1987, c. 429, s. 19; c. 827, s. 223; 1999-393, s. 1; 2000-122, s. 8; 2005-451, s. 1.)

§ 143-143.13. Grounds for denying, suspending, or revoking licenses; civil penalties.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

- (1) Making a material misstatement in application for license.
- (2) Failing to post an adequate corporate surety bond, cash bond or fixed value equivalent.

- (3) Engaging in the business of manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board.
- (4) Failing to comply with the warranty service obligations and claims procedure established by this Part.
- (5) Failing to comply with the set-up requirements established by this Part.
- (6) Failing or refusing to account for or to pay over moneys or other valuables belonging to others that have come into licensee's possession arising out of the sale of manufactured homes.
- (6a) Failing to comply with the escrow or trust account provisions of Part 2 of this Article.
- (7) Using unfair methods of competition or committing unfair or deceptive acts or practices.
- (8) Failing to comply with any provision of this Part.
- (9) Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board after proper notice or failing to comply with orders of the Board issued pursuant to this Part.
- (10) Employing unlicensed salespersons.
- (11) Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.
- (12) Conviction of any crime listed in G.S. 143-143.10A.
- (13) Having had a license revoked, suspended or denied by the Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Part.
- (14) Employing or contracting with any person to perform setups who is not licensed by the Board as a set-up contractor.
- (15) Failure to comply with the provisions of Chapters 47G and 47H of the General Statutes.
- (b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Part the Board may impose a civil penalty upon any person violating the provisions of this Part. Upon a finding by the Board of a violation of this Part, the Board shall order the payment of a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection

shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty. (1981, c. 952, s. 2; 1985, c. 487, ss. 3 to 5; c. 666, s. 38; 1985 (Reg. Sess., 1986), c. 1027, s. 51; 1987, c. 429, s. 19; 1989, c. 485, s. 45; 1991, c. 644, s. 34; 1998-215, s. 92; 1999-393, s. 1; 2003-400, s. 11; 2005-451, ss. 1, 4; 2010-164, s. 5.)

§ 143-143.14. Hearings; rules.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Part, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1993, c. 504, s. 34; 1993 (Reg. Sess., 1994), c. 678, s. 34; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.15. Set-up requirements.

(a) Manufactured homes shall be set up in accordance with the standards adopted by the Commissioner.

(b) If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage that indicates the manufactured home was not set up in the manner required by this section, the insurer issuing the insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the manufactured home was not properly set up. (1981, c. 952, s. 2; 1987, c. 429, s. 8; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.16. Warranties.

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

- (1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other

components included by the manufacturer are manufactured and installed free from substantial defects.

- (2) The dealer warrants:
 - a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any resulting damage.
 - b. That a setup performed by the dealer on the manufactured home is performed in compliance with the Code.
 - c. That the setup and transportation of the manufactured home by the dealer did not result in substantial defects.
- (3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.
- (4) The set-up contractor warrants that the manufactured home is set up in compliance with the Code and that the setup did not result in any substantial defects. (1981, c. 952, s. 2; 1987, c. 429, s. 9; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided in this Part. The licensee shall make a record of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing in this section prevents a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Part, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Part, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations

of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by this Part is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days after the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days after the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Part, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct that coerces or requires a nonresponsible party to perform warranty service is a violation of this Part.

(e) Warranty service shall be performed at the site at which the manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier may complain to the Board when warranty service obligations under this Part are not being enforced. (1981, c. 952, s. 2; 1987, c. 429, ss. 17, 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Part or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to adopt rules in accordance with Chapter 150B of the General Statutes that define the alterations or modifications which must be made by qualified personnel.

The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes. (1981, c. 952, s. 2; 1987, c. 429, s. 19; c. 827, s. 1; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home. (1981, c. 952, s. 2; 2005-451, s. 1.)

§ 143-143.20A. Display of pricing on manufactured homes.

(a) If the manufacturer of a manufactured home publishes a manufacturer's suggested retail price, that price shall be displayed near the front entrance of the manufactured home.

(b) Each manufactured home dealer shall prominently display a sign and provide to each buyer a notice, developed by the North Carolina Manufactured Housing Board, containing information about the Board, including how to file a consumer complaint with the Board and the warranties and protections provided for each new manufactured home under federal and State law. (2003-400, s. 6; 2005-451, s. 1.)

§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6.

§ 143-143.21A. Purchase agreements; buyer cancellations.

(a) A purchase agreement for a manufactured home shall include all of the following:

- (1) A description of the manufactured home and all accessories included in the purchase.
- (2) The purchase price for the home and all accessories.
- (3) The amount of deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.
- (4) The date the retail purchase agreement is signed.
- (5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.
- (6) The buyer's signature.
- (7) The dealer's signature.

(b) The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, the following statement:

"I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER MAY NOT HAVE ANY OBLIGATION TO GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER. I UNDERSTAND ANY CHANGE TO THE TERMS OF THE PURCHASE AGREEMENT BY THE DEALER WILL CANCEL THIS AGREEMENT."

(c) At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer shall give the buyer a copy of the purchase agreement and a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the purchase agreement, be easily detachable, and explain the buyer's right to cancel the purchase and how that right can be exercised.

(d) The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement or if any of the material terms of the purchase agreement are changed by the dealer. To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall return the deposit or other payment toward or payment for the purchase price to the buyer within seven business days, or 15 business days when payment is by personal check, after receipt of the notice of cancellation or within three business days of any change by the dealer of the purchase agreement. For purposes of this section, "business day" means any day except Sunday and legal holidays. Each time the dealer gives the buyer a new set of financing terms, unless the financing terms are more favorable to the buyer, the buyer shall be given another three-day cancellation period. The dealer shall not commence setup procedures until after the final three-day cancellation period has expired.

(e) If the buyer cancels the purchase after the three-day cancellation period, but before the sale is completed, and if:

- (1) The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or
- (2) The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's deposit or other payment received from the buyer.

(f) Repealed by Session Laws 2005-451, s. 5, effective April 1, 2006. (1993, c. 409, s. 7; 1999-393, s. 1; 2003-400, s. 7; 2005-451, ss. 1, 5; 2006-259, s. 24.5.)

§ 143-143.21B. Dealer cancellation; deposit refund.

A dealer shall refund to a buyer the full amount of a deposit on the purchase of a manufactured home if the buyer has fulfilled his obligations under the purchase agreement and the dealer cancels the purchase at any time. (1998-211, s. 37; 2005-451, s. 1.)

§ 143-143.22. Inspection of service records.

The Board may inspect the service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a copy of every document or record pertinent to any complaint or claim for service. (1981, c. 952, s. 2; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.23. Other remedies not excluded.

Nothing in this Part, rules adopted by the Board, or any action of the Board shall limit any right or remedy available to the buyer or any power or duty of the Attorney General. (1981, c. 952, s. 2; 1987, c. 429, s. 19; 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, salesperson, or set-up contractor without first obtaining a license from the Board, as provided in this Part, he shall be guilty of a Class 1 misdemeanor. (1985, c. 487, s. 6; 1987, c. 429, s. 19; 1993, c. 539, s. 1010; 1994, Ex. Sess., c. 24, s. 14(c); 1999-393, s. 1; 2005-451, s. 1.)

§ 143-143.25. Staff support for Board.

The Manufactured Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Part and all rules adopted under this Part, subject to the direction of the Board; except for powers and duties delegated by this Part to local units of government, other State agencies, or to any persons. (1991, c. 644, s. 36; 1999-393, s. 1; 2005-451, s. 1.)

§§ 143-143.26 through 143-143.49: Reserved for future codification purposes.

Part 2. Buyer Deposit, Escrow or Trust Accounts.

§ 143-143.50. Escrow or trust account required.

(a) Dealers shall maintain buyers' deposits in an escrow or trust account with a bank. A dealer shall not commingle any other funds with buyers' deposits in the escrow or trust account.

(b) Dealers shall notify the Board in writing when the escrow or trust account is established. The notification shall include the name and number of the account and the name and location of the bank holding the account.

(c) All buyer funds shall be placed in the escrow or trust account no later than the close of the third banking business day after receipt.

(d) Dealers shall provide buyers with a receipt for all buyer deposits received by the dealer. The receipt shall include the amount of the buyer deposit, the date the deposit was provided to the dealer, and the name and address of the bank where the buyer's funds will be deposited. (2005-451, s. 6.)

§ 143-143.51. Use of escrow or trust funds; penalty for violations.

(a) Buyer funds in the dealer's escrow or trust account shall be held for the benefit of the buyer and may only be used for purposes authorized under the contractual obligations of the dealer to the buyer. No buyer funds in the dealer's escrow or trust account may be used by the dealer until after all the terms set forth in G.S. 143-143.21A are finalized and after the three-day right of cancellation period as set forth in G.S. 143-143.21A has expired. The dealer may use buyer funds to complete the steps necessary for site preparation of property, when approved in writing in advance by the buyer. Buyer funds in the dealer's escrow or trust account shall be promptly returned to the buyers when the buyer is entitled to return of the funds in accordance with G.S. 143-143.21A.

(b) Notwithstanding any other provision of law and in addition to any other sanction the Board may impose under this Article, if the Board finds that a dealer has used a buyer's funds for a purpose that is not authorized under subsection (a) of this section or if the Board finds that a dealer has failed to place deposits in the dealer's escrow or trust account, the Board may fine the dealer or order restitution to the buyer in an amount up to the amount that the dealer misappropriated or failed to place in the account. (2005-451, s. 6.)

§ 143-143.52. Minimum requirements for dealer records for escrow or trust accounts at banks.

The records required for escrow or trust accounts maintained at a bank shall consist of the following and be maintained for a period of five years from the date of purchase:

- (1) All bank receipts or deposit slips listing the source and date of receipt of all funds deposited in the account and the name of the buyer to whom the funds belong.
- (2) All cancelled checks or other instruments drawn on the account, or printed digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement.
- (3) All instructions or authorizations to transfer, disburse, or withdraw funds from the escrow or trust account.
- (4) All bank statements and other documents received from the bank with respect to the escrow or trust account, including notices of return or dishonor of any instrument drawn on the account against insufficient funds.
- (5) A ledger containing a record of receipts and disbursements for each buyer from whom and for whom funds are received and showing the current balance of funds held in the escrow or trust account for each buyer. (2005-451, s. 6.)

§ 143-143.53. Accountings for escrow or trust funds.

Upon the request of the buyer, the dealer shall provide to the buyer a written accounting of the receipts and disbursements of all escrow or trust funds upon the complete disbursement of the escrow or trust accounts. (2005-451, s. 6.)

§ 143-143.54. Audits and record inspection.

All financial records required by this Part shall be subject to audit for cause and to random audit at the discretion of and by the Board, the Commissioner, or the Attorney General. The Board may inspect these records periodically, without prior notice and may also inspect these records whenever the Board determines that the records are pertinent to an investigation of any complaint against a licensee. The dealer shall provide written authorization to the bank that holds the escrow or trust account to release any and all requested information relative to the account to the parties authorized under this section to inspect those records. (2005-451, s. 6.)